



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/633,326	08/07/2000	Eric W. Nace	MS154753.1	3403

27195 7590 06/04/2004

AMIN & TUROCY, LLP
24TH FLOOR, NATIONAL CITY CENTER
1900 EAST NINTH STREET
CLEVELAND, OH 44114

EXAMINER

GEREZGIHER, YEMANE M

ART UNIT PAPER NUMBER

2144

DATE MAILED: 06/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.



Advisory Action	Application No. 09/633,326	Applicant(s) NACE ET AL.	
	Examiner Yemane M Gerezgiher	Art Unit 2144	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 07 May 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 1-21

Claim(s) withdrawn from consideration: _____

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☐ Other: _____

MARC THOMPSON
MARC D. THOMPSON
PRIMARY EXAMINER

Continuation of 5. does NOT place the application in condition for allowance because:
The arguments mailed 05/07/2004 are not persuasive. Banga disclosed "... providing a scalable means of generating a realistic HTTP requests ..." (See Page 2, Left Column, Lines 1-2). See Page 5, Section 4 entitled: A Scalable Method for Generating HTTP requests an Page 5 Section 4.2, "... generating HTTP requests at a certain rate and with a certain request distribution ..." In this case, when a client generated an HTTP request to the server, it is broadly interpreted to mean it's desired request where the desired request is the capacity of the server. Having said that, the scalable request generating means of Banga adjusts the request rate in accordance with the capacity of the server that is being stress tested. (See Page 5, Section 4). Once the server can't longer handle the generated requests, a capacity of a server is determined ("... 130 requests per second, which is the capacity of our server for this request size ... the request rate remains nearly constant at the capacity of the server"). See Page 9, Section 5.4 and Page 8, Left Column.
Once the capacity of the server was determined, the request rate remained constant (130 requests per second). As indicated in the last action, the specific server capacity (130/second) described must have been (inherently disclosed) calculated based on the desired client rate of requests (scalable requests generated) and actual generated requests. Thus, determining the capacity of the web server by calculating an actual rate of requests being generated and adjusting the scalable actual rate to within a predetermined range of the desired rate such that a continual rate (where the request rate remaining at nearly constant rate at the capacity of the server). See Page 9, Section 5.4 and Page 8, Left Column. Thus, the Examiner maintains the rejection as applied in the last office action.

MARC THOMPSON

MARCD. THOMPSON
PRIMARY EXAMINER

703.308.6750